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SCOTT WARREN, and REX SHUPE*

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

PETER DELVECCHIA, individually and as
next friend of A.D., a Minor,

Plaintiff,

v.

FRONTIER AIRLINES, INC.,
SCOTT WARREN,
CHELSIE BRIGHT SAKURADA,
ANNA BOND, AMANDA NICKEL,
REX SHUPE, and SHAWN MULLIN

Defendants.

Case No.: 2:19-cv-01322-KJD-DJA

**REX SHUPE’S ANSWER TO
PLAINTIFFS’
FIRST AMENDED COMPLAINT
& DEMAND FOR JURY TRIAL**

**DEFENDANT REX SHUPE’S ANSWER TO
PLAINTIFFS’ FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL**

Defendant REX SHUPE (“Captain Shupe”), by his undersigned counsel, and for his
Answer to Plaintiffs’ First Amended Complaint and Demand for Jury Trial, states:

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Jurisdiction

The Jurisdiction Paragraphs consist of conclusions of law to which no response is required. In the event a response is deemed required, Captain Shupe denies the allegations contained in the Jurisdiction Paragraphs.

Venue

The Venue Paragraph consists of conclusions of law to which no response is required. In the event a response is deemed required, Captain Shupe denies the allegations contained in the Venue Paragraph.

The Parties

1. Captain Shupe lacks sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 1.

2. Captain Shupe lacks sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 2.

3. Captain Shupe admits the allegations contained in Paragraph 3.

4. Captain Shupe admits that Warren is a male individual who was, at the time of the events described in Plaintiffs' First Amended Complaint, employed as a flight attendant by Frontier. Captain Shupe further admits that Warren worked as a flight attendant on the flight that is the subject of Plaintiffs' First Amended Complaint. Captain Shupe lacks sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 4 regarding Warren's residency. Captain Shupe denies the remaining allegations in Paragraph 4.

5. Captain Shupe admits that Bright is a female individual who was, at the time of the events described in Plaintiffs' First Amended Complaint, employed as a flight attendant by Frontier. Captain Shupe further admits that Bright worked as a flight attendant on the flight that is the subject of Plaintiffs' First Amended Complaint. Captain Shupe lacks sufficient information

7. Captain Shupe admits that Nickel is a female individual who was, at the time of the events described in Plaintiffs' First Amended Complaint, employed as a flight attendant by Frontier. Captain Shupe further admits that Nickel worked as a flight attendant on the flight that is the subject of Plaintiffs' First Amended Complaint. Captain Shupe lacks sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 7 regarding Nickel's residency.

9. Captain Shupe admits that Mullin is a male individual who was, at the time of the described in Plaintiffs' First Amended Complaint, employed as a pilot by Frontier. Captain Shupe further admits that Mullin worked as the First Officer on the flight that is the subject of Plaintiffs' First Amended Complaint. Captain Shupe lacks sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 9 regarding Mullin's negligence.

10. Captain Shupe admits that on March 28, 2019, Plaintiffs were passengers onboard Frontier Flight 2067 from Raleigh-Durham International Airport in North Carolina to McCarran International Airport in Las Vegas, Nevada. Captain Shupe lacks sufficient knowledge or

1 information to form a belief as to the truth of the remaining allegations contained in Paragraph
2 10.

3 11. Captain Shupe lacks sufficient information or knowledge to form a belief as to the
4 truth of the allegations in Paragraph 11 that during the flight, Peter fell asleep with his head
5 resting on the back of the seat in the row ahead of him. Captain Shupe denies the remaining
6 allegations contained in Paragraph 11.
7

8 12. Captain Shupe denies the allegations contained in Paragraph 12.

9 13. Captain Shupe denies the allegations contained in Paragraph 13.

10 14. The allegations contained in Paragraph 14 contain conclusions of law to which no
11 response is required. In the event a response is deemed required, Captain Shupe denies the
12 allegations contained in Paragraph 14.
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14 15. The allegations contained in Paragraph 15 contain conclusions of law to which no
15 response is required. In the event a response is deemed required, Captain Shupe denies the
16 allegations contained in Paragraph 15.

17 16. The allegations contained in Paragraph 16 contain conclusions of law to which no
18 response is required. In the event a response is deemed required, Captain Shupe denies the
19 allegations contained in Paragraph 16.
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21 17. Captain Shupe denies the allegations contained in Paragraph 17.

22 18. Captain Shupe denies the allegations contained in Paragraph 18.

23 19. The allegations contained in Paragraph 19 contain conclusions of law to which no
24 response is required. In the event a response is deemed required, Captain Shupe denies the
25 allegations contained in Paragraph 19.

26 20. The allegations contained in Paragraph 20 contain conclusions of law to which no
27 response is required. In the event a response is deemed required, Captain Shupe denies the
28 allegations contained in Paragraph 20.

21. The allegations contained in Paragraph 21 contain conclusions of law to which no response is required. In the event a response is deemed required, Captain Shupe denies the allegations contained in Paragraph 21.

Count I:

Compensatory and Punitive Damages and Attorneys' Fees Pursuant to 42 U.S.C. § 1981

22. Captain Shupe repeats, re-alleges, and incorporates by reference his Answers to each and every allegation contained in Paragraphs 1 through 21 as though fully set forth herein.

23. The allegations contained in Paragraph 23 contain conclusions of law to which no response is required. In the event a response is deemed required, Captain Shupe denies the allegations contained in Paragraph 23.

24. Captain Shupe denies the allegations contained in Paragraph 24.

25. Captain Shupe denies the allegations contained in Paragraph 25.

26. Captain Shupe denies the allegations contained in Paragraph 26.

27. Captain Shupe denies the allegations contained in Paragraph 27.

Count II: Compensatory and Punitive Damages Pursuant to State Law for Intentional Infliction of Emotional Distress

28. Captain Shupe repeats, re-alleges, and incorporates by reference his Answers to each and every allegation contained in Paragraphs 1 through 21 as though fully set forth herein.

29. The allegations contained in Paragraph 29 contain conclusions of law to which no response is required. In the event a response is deemed required, Captain Shupe denies the allegations contained in Paragraph 29.

30. Captain Shupe denies the allegations contained in Paragraph 30.

31. Captain Shupe denies the allegations contained in Paragraph 31.

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***Count III: Compensatory and Punitive Damages Pursuant to State Law for
False Imprisonment / Unlawful Detention***

32. Captain Shupe repeats, re-alleges, and incorporates by reference his Answers to each and every allegation contained in Paragraphs 1 through 21 as though fully set forth herein.

33. The allegations contained in Paragraph 33 contain conclusions of law to which no response is required. In the event a response is deemed required, Captain Shupe denies the allegations contained in Paragraph 33.

34. Captain Shupe denies the allegations contained in Paragraph 34.

35. Captain Shupe denies the allegations contained in Paragraph 35.

***Count IV: Compensatory and Punitive Damages Pursuant to State Law
for Battery and Sexual Assault***

36. Captain Shupe repeats, re-alleges, and incorporates by reference his Answers to each and every allegation contained in Paragraphs 1 through 21 as though fully set forth herein.

37-39. Captain Shupe makes no response to the allegations contained in Paragraphs 37 through 39 of Count IV of Plaintiffs' First Amended Complaint because these allegations are not directed at Captain Shupe. In the event a response is deemed required, Captain Shupe denies the allegations contained in Paragraphs 37 through 39 of Count IV of Plaintiffs' First Amended Complaint.

***Count V: Compensatory and Punitive Damages
Pursuant to State Law for Defamation***

40. Captain Shupe repeats, re-alleges, and incorporates by reference his Answers to each and every allegation contained in Paragraphs 1 through 21 as though fully set forth herein.

41-43 Captain Shupe makes no response to the allegations contained in Paragraphs 41 through 43 of Count V of Plaintiffs' First Amended Complaint because these allegations are not directed at Captain Shupe. In the event a response is deemed required, Captain Shupe denies the

1 allegations contained in Paragraphs 41 through 43 of Count V of Plaintiffs' First Amended
2 Complaint.

3
4 **GENERAL DENIAL**

5 Defendant REX SHUPE denies all allegations of Plaintiffs' First Amended Complaint
6 which are not specifically admitted above.

7 **AFFIRMATIVE DEFENSES**

8 In further response to Plaintiffs' First Amended Complaint, Defendant REX SHUPE
9 raises and preserves the following Affirmative Defenses:

10 1. Plaintiffs' First Amended Complaint fails, in whole or in part, to state a cause of
11 action upon which relief can be granted.

12 2. Plaintiffs may lack capacity or standing to bring this action.

13 3. Plaintiffs' action is filed in an improper venue.

14 4. Plaintiffs' action is barred, in whole or in part, by the applicable statute of
15 limitations.

16 5. Plaintiffs' claims are barred, in whole or in part, by *res judicata*, collateral
17 estoppel, laches, waiver, or unclean hands.

18 6. Plaintiffs' action may be governed, in whole or in part, by the laws of
19 jurisdictions other than Nevada.

20 7. Plaintiffs' claims are preempted, in whole or in part, by federal law.

21 8. Plaintiffs' alleged damages, if any, are barred or limited under applicable law.

22 9. Plaintiffs' alleged damages, if any, may have been directly and proximately
23 caused by an unavoidable accident or an act of god for which Captain Shupe is not responsible.

24 10. Plaintiffs' alleged damages, if any, are barred or limited under applicable law due
25 to Plaintiffs' failure to mitigate damages.

1 11. Plaintiffs' alleged damages, if any, were caused in whole or in part by the
2 assumption of risk, fault, neglect, want of care, or independent, intervening, or superseding acts
3 or omissions or other culpable conduct of Plaintiffs themselves for which Captain Shupe is not
4 responsible.

5 12. Plaintiffs' recovery, if any, shall be barred or diminished to the extent that such
6 injury or damage was proximately caused by negligence or other tortious misconduct on the part
7 of Plaintiffs or third parties.

8 13. Captain Shupe denies that his conduct was a cause or proximate cause of
9 Plaintiffs' alleged damages. Further, Plaintiffs' alleged damages, if any, were caused in whole or
10 in part, by acts or omissions, including but not limited to, unusual negligent or willful acts or
11 omissions by other persons or entities, named or unnamed, over whom Captain Shupe has no
12 control or right to control.

13 14. Plaintiffs' claims and recovery are barred, in whole or in part, by the applicable
14 laws governing comparative fault, contributory negligence, and assumption of risk due to the
15 acts or omissions of unknown third parties for which Captain Shupe is not responsible.

16 15. Plaintiffs' alleged damages, if any, were caused by the acts or omissions of other
17 persons or entities for which Captain Shupe is not liable. In the event Captain Shupe is found
18 liable to Plaintiffs, which he expressly denies, Captain Shupe may be entitled to indemnification
19 or contribution from such third parties, or apportionment of liability and fault against such third
20 parties pursuant to applicable law and reserves his right to seek the same.

21 16. Some or all of Plaintiffs' claims may be barred, in whole or in part, because
22 Plaintiffs may have already received full satisfaction or compensation for their alleged damages,
23 if any, and Plaintiffs' claims may be barred by such prior release of claims or accord and
24 satisfaction with any entity.

1 17. If Plaintiffs have available to them and have received benefits paid by a collateral
2 source for their injuries and damages, if any, Captain Shupe is entitled to a setoff of these
3 amounts against any amount of damages awarded against him, if any, pursuant to the applicable
4 Nevada statute.

5 18. Plaintiffs' claims are barred, in whole or in part, by contractual release,
6 disclaimer, or limitations remedies entered into by Plaintiffs.

7 19. Plaintiffs' claims are barred or limited pursuant to contract.

8 20. Plaintiffs' claims are waived, in whole or in part, pursuant to contract.

9 21. Pursuant to applicable federal and state law, Captain Shupe is entitled to
10 immunity, qualified or otherwise, for the conduct alleged in Plaintiffs' First Amended
11 Complaint.

12 22. Pursuant to applicable federal and state law, Captain Shupe is entitled to a
13 privilege, qualified or otherwise, for the conduct alleged in Plaintiffs' First Amended Complaint.

14 23. Captain Shupe is entitled to immunity from civil liability pursuant to all
15 applicable Nevada statutes pertaining to protection of children from abuse and neglect including
16 but not limited to Nev. Rev. Stat. § 432B.010 *et seq.*

17 24. Captain Shupe is entitled to immunity from civil liability pursuant to all
18 applicable federal statutes pertaining to protection of children from abuse and neglect.

19 25. Plaintiffs' claims are barred pursuant to applicable federal statutes, including but
20 not limited to 49 U.S.C. § 44902(b), 6 U.S.C. § 1104, and 49 U.S.C. § 44941.

21 26. Captain Shupe is entitled to immunity from civil liability pursuant to all
22 applicable state and federal statutes and/or laws pertaining to reporting suspected sexual assault
23 or abuse to law enforcement.

24 27. Captain Shupe has complied with all applicable codes, standards, and regulations
25 of the United States and agencies thereof.

RESERVATION OF FURTHER DEFENSES

Defendant REX SHUPE reserves the right to supplement and amend his defenses to this action, including his Affirmative Defenses, as necessary in light of the allegations, facts, claims, and changes or modifications in the law.

WHEREFORE, having fully answered and responded to the allegations in Plaintiffs' First Amended Complaint, Defendant REX SHUPE respectfully requests:

1. A judgment that Plaintiffs shall take nothing by way of their First Amended Complaint;
2. An award to Captain Shupe of costs of this suit and any recoverable attorneys' fees; and
3. Such other and further relief as this Court deems necessary and proper.

DEMAND FOR JURY TRIAL

Defendant REX SHUPE demands trial by jury.

Date: May 28, 2020

Respectfully submitted,

REX SHUPE

By: /s/ Tara Shelke
Brian T. Maye (admitted *pro hac vice*)
Tara Shelke (admitted *pro hac vice*)
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CERTIFICATE OF SERVICE

I hereby certify that on May 28, 2020, I caused the foregoing to be electronically filed with the United States District Court for the District of Nevada using the CM/ECF system.

By: /s/ Tara Shelke